

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MIR AFSAR,

No. C 06-01149 WHA

Petitioner,

v.

ORDER TO SHOW CAUSE

ALBERTO GONZALES, Attorney General;
MICHAEL CHERTOFF, Secretary,
Department of Homeland Security; NANCY
ALCANTAR, San Francisco District Field
Director of Detention and Removal,
Immigration and Customs Enforcement,
Department of Homeland Security,

Respondents.

INTRODUCTION

Petitioner Amir Afsar petitions the Court for a writ of habeas corpus, seeking his release on bond from federal custody at the Santa Clara County Jail in San Jose. He states colorable claims and therefore is entitled to an order directing respondents to show cause why a writ should not issue.

STATEMENT*

Petitioner is a citizen of Pakistan who first entered the United States in 1991. He applied for political asylum in 1992. He left the United States and was paroled back into the country in 1996. The next year, he married a United States citizen. She filed an immigrant visa

* All facts asserted here are those alleged in the petition.

1 application on his behalf. He left the country again in 1999 and was paroled back later that
2 year.

3 In 2002, his application for adjustment of immigrant status was denied because he had
4 separated from his wife and did not show that the marriage was entered into in good faith. He
5 was divorced from his wife and remarried briefly. On September 23, 2005, he married a third
6 United States citizen. On December 23, 2005, he was taken into federal custody and placed in
7 removal proceedings. The government charged him with not having a valid unexpired visa at
8 the time of his entry into the United States, and for making a willful misrepresentation of a
9 material fact to obtain a visa. On January 29, the government denied petitioner bond without
10 giving any reasons.

11 On February 16, he filed his petition for a writ of habeas corpus. He claims that he is
12 being held in violation of (1) federal regulations requiring that the government individually
13 determine whether or not to release someone on bond, (2) the Fifth Amendment right to due
14 process of law and (3) "his constitutional right to be free from government custody because the
15 District Director did not provide any rational basis for his decision."

16 ANALYSIS

17 A person may apply for a writ of habeas corpus if he is being held in custody under the
18 authority of the United States or in violation of the Constitution or laws of the United States. 28
19 U.S.C. 2241(c)(1), (c)(3). In applying, he or she must allege the facts concerning detention, the
20 name of the person who has custody over him or her and "by virtue of what claim or authority,
21 if known," custody is maintained. 28 U.S.C. 2242 ¶ 2. The applicant is entitled to an order
22 directing the respondent to show cause why a writ should not be issued if it does not appear
23 "from the application that the applicant or person detained is not entitled thereto." 28 U.S.C.
24 2243 ¶ 1. Such summary dismissal is only appropriate when the allegations in the petition are
25 vague, conclusory, "palpably incredible" or "patently frivolous or false." *Hendricks v. Vasquez*,
26 908 F.2d 490, 491 (9th Cir. 1990).


1 The instant petition does not require summary dismissal. Respondents therefore are
2 ordered to show cause why a writ should not issue on one or more of the grounds alleged in the
3 petition.

4 **CONCLUSION**

5 The **CLERK SHALL SERVE** respondents and respondents' counsel with a copy of the
6 petition, all attachments to it and this order. Respondents **SHALL FILE AND SERVE UPON**
7 **PETITIONER, BY MAY 15, 2006, AN ANSWER** to the petition. Respondent **SHALL, BY THAT**
8 **DATE, ALSO SERVE A FULL RECORD OF THE IMMIGRATION PROCEEDINGS** involving
9 petitioner. If petitioner wishes to respond to the answer, he **SHALL FILE A TRAVERSE** with the
10 Court and serve it upon respondent on the earlier of June 14, 2006, or thirty days after the
11 answer is filed and served, whichever is earlier.

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13 **IT IS SO ORDERED.**

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15 Dated: March 16, 2006

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18 WILLIAM ALSUP
19 UNITED STATES DISTRICT JUDGE
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